

Mr. President, last week marked the 14th anniversary of the vicious shooting of President Reagan and Jim Brady by John Hinckley. And last month marked the first anniversary of the effective day of the Brady bill.

Critics claimed that Brady would mark an end to personal freedom, and that felons and drug traffickers would never buy guns over the counter. But 1 year after enactment, the sky has not fallen. And the Brady law—for the most part—is accomplishing its goal: Keeping guns out of the hands of criminals and drug traffickers, while not unduly inconveniencing law abiding gun owners.

According to the Bureau of Alcohol, Tobacco and Firearms, over the past year in the 29 States covered by Brady, the law prevented approximately 40,000 firearms purchases. Indeed, when States with their own background checks are added in, B-A-T-F estimates that law enforcement denied up to 70,000 gun purchases in the past year. That means fugitives, rapists and murderers have been stopped while trying to purchase guns.

Statistics from my State support these conclusions. Wisconsin, which has its own 2 day waiting period and background check, has blocked more than 800 convicted felons from buying handguns in the past 3 years. And keeping guns out of the hands of criminals, Mr. President, is the most effective form of prevention—as well as the best way to ensure the safety of the community.

But while the background check and waiting period have stopped gun sales to criminals, authorities need to do more to prosecute the criminals who try to buy guns. CBS news found that only 551 people had been prosecuted in 19 States. And according to the Washington Post, fewer than 10 have been prosecuted federally. These figures just do not add up. We need to do a better job of putting these people behind bars.

In my opinion, if you lie on the Brady Act form you should go to jail. Period. That is the law.

Mr. President, the police chiefs, sheriffs and other law enforcement officers know the real truth: The Brady law has proven to be an effective tool in helping to keep handguns out of the wrong hands. And the American people agree: The latest CBS News/New York Times poll found that 87 percent support the Brady law.

In conclusion, Mr. President, on this anniversary all of us should express our gratitude and appreciation to Sarah and Jim Brady. We would not be where we are today without their hard work.

RECESS UNTIL 12:45 P.M.

Mr. BURNS. Mr. President, I ask unanimous consent that the Senate stand in recess until 12:45 p.m. today.

There being no objection, the Senate, at 12:18 p.m., recessed until 12:44 p.m.; whereupon, the Senate reassembled

when called to order by the Presiding Officer (Mr. ASHCROFT).

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I understand the distinguished Senator from Hawaii wants to speak for 5 minutes. Let me indicate there are some negotiations going on back and forth between the leadership, myself, Senator DASCHLE, members of our staff, the presiding officer, and others. I think it is going to be at least, probably, another 45 minutes before we have any response. They presented us an offer, we presented a counteroffer. Hopefully, we can reach some agreement. If not, it will probably slow things down a bit.

My view is those who have not yet filed—I guess there is a 1 o'clock deadline for filing amendments—even though we may be in recess they be permitted to file their amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. After the remarks of the Senator from Hawaii, I ask unanimous consent that we stand in recess until 1:45.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Hawaii.

PRIVILEGE OF THE FLOOR—S. 678

Mr. AKAKA. Mr. President, I ask unanimous consent that Tom Menjin be granted the privilege of the floor while I give a statement regarding the introduction of a bill. Mr. Menjin is a Congressional Fellow in my office.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. I thank the Chair.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 678 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

RECESS UNTIL 1:45 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 1:45 p.m.

Thereupon, the Senate, at 12:51 p.m. recessed until 1:44 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. GREGG).

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRYOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

Mr. PRYOR. Mr. President, I ask unanimous consent that I may speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMPETITION AND THE PHARMACEUTICAL INDUSTRY

Mr. PRYOR. Mr. President, a year ago we were in the midst of a momentous debate in this institution over the reform of our Nation's health care system. At that time, one of my concerns was that dramatic changes were taking place in the prescription drug marketplace. A number of prescription drug manufacturers had begun to experience competitive pressures arising from the growth of generic drugs and managed care. But disturbingly, one of their strategies was to coopt or, if possible, eliminate the sources of that competitive pressure.

In the days that have followed, we have seen some extraordinary changes in the drug marketplace. There has been a wave of multibillion dollar mergers and acquisitions which, according to a recent issue in the Wall Street Journal, "promises to create industry giants." This remarkable consolidation has profound consequences for American consumers.

A few days ago, in fact it was April fool's day to be exact, the Associated Press reported that corporate merger activity broke all records last year and extended its frenetic pace into the first quarter of 1995—with the drug industry leading the way.

Mr. President, in the past 3 months alone, the drug industry by itself has carried out some \$23 billion in mergers and buying out their competition worldwide.

We read just the other day, for example, about Glaxo's \$14 billion hostile takeover of Burroughs Wellcome, both major drug giants. This deal will create the world's largest pharmaceutical company, in the wake of other giant deals like Hoechst's anticipated \$7.1 billion purchase of Marion Merrill Dow, American Home Products' \$9.7 billion buyout of American Cyanamid and Hoffmann-La Roche's \$5.3 billion acquisition of Syntex.

Brand name companies have also been investing heavily in biotechnology, generic and over-the-counter drug companies. Ciba purchased a \$2 billion stake in Chiron, and SmithKline Beecham recently just bought Sterling for \$3 billion. Hoechst spent a paltry half a billion dollars on a generic company called Copley.

These are remarkable figures, Mr. President. And if we simply add up the cost of just a sampling of some of these recent mergers and acquisitions, we will find that they total \$54 billion.

In the last 15 months, \$54 billion has been spent by giant pharmaceutical companies buying up and acquiring their competition. That is an interesting figure when we compare it to the research and development that is planned by the entire prescription drug industry for the year 1995: \$14.9 billion

spent on research compared to \$54 billion spent by the major pharmaceutical companies in acquiring their competition since the beginning of last year.

That is three and a half times what the entire industry is going to spend in research in 1995. This is an extraordinary difference. One would think that such large deals would leave these companies either in debt or strapped for cash. Mr. President, that is not so. These companies are so profitable and their pockets are so deep, Wall Street's Standard & Poor's concluded just a few days ago that the industry's ability to "generate cash in excess of ongoing needs is likely to continue." And their generating that cash is going to continue because the consumer in the United States is going to continue paying the highest drug prices of any major country in the world today.

This is a far cry from the recent past. We may recall that just a year ago the industry was sounding the alarm about declining profits and research cutbacks. These companies claimed that they were under siege and out of favor with investors. A year and a half ago, these same companies warned that research would be choked off by health reform.

This is a statement by Merck in 1993: "R&D will fall at least \$2 to \$3 billion over the next 5 years."

Well, today, Mr. President, we are hearing a different story. This year, Bear Stearns says earnings growth will be "the best we have seen in years" for the drug industry. They are out spending \$54 billion on mergers and we have to wonder how serious the threat to research ever was.

Well, Mr. President, why are they spending all of this money to buy their competition? Why are these mergers taking place? Let us look a little deeper.

Last month, the CEO of Glaxo put it quite simply. His company is trying to do "nothing more than to wrench market power back from the administrators and the distributors who now hold the health care purse-strings." His company is responding to competitive pressures by focusing on its research portfolio.

But what if the brand name companies owned those administrators? What if the brand name companies owned those distributors? What if they not only wrench that market power back—they buy it outright? Who will hold the health care purse-strings at that time?

This is exactly what we are facing today in the United States. The drug industry's acquisitions have not been restricted to brand name or biotechnology companies. They have also included the country's largest pharmacy benefits management companies. We call these companies, PBM's. We are going to hear a lot in the future about PBM's.

What is a PBM? A PBM is hired by HMO's, by health plans, by major corporations, and by self-insured companies to administer their prescription

drug programs. PBM's act as a buying agent in negotiating with the drug manufacturers, seeking deep discounts for their clients and in developing cost-saving formulas for their covered patients. They may also deliver medicine to patients through selected pharmacies or through mail-order.

In rapid succession, these PBM's have been snapped up by some of the biggest drug companies in the world. Only 2 years ago, April 1993, the PBM market was completely independent of the pharmaceutical manufacturers. Only 24 months later, in April 1995, SmithKline Beecham-Diversified, Merck-Medco, and now Eli Lilly-PCS would dominate 80 percent of the PBM market.

This is vertical integration, as clear a case as I have ever seen. Merck paid \$6 billion for Medco Containment Services, one of the largest PBM's and distributors of drugs. SmithKline Beecham bought Diversified Pharmaceutical Services for \$2.3 billion. Today, Eli Lilly is, as we speak, ready to close on acquiring a company called PCS, the Nation's largest PBM company, for \$4.1 billion.

The prescription drug marketplace is being revolutionized. Before too long, there may only be a handful of major drug companies left. The major manufacturers of prescription drugs in this country are soon, Mr. President, going to have a lot less competition.

This kind of vertical integration between large manufacturers and distributors, however, is unprecedented. We can see what has happened in the last 24 months. It has had very different implications for consumers than the horizontal mergers and acquisitions so prevalent in today's headlines.

If Lilly is permitted to purchase PCS, the three largest PBM companies will belong to brand name drug companies that research, manufacture, and distribute drugs. These three PBM companies serve 94 million covered lives—80 percent of the total PBM market. A handful of drug companies will wield tremendous influence over which drugs are used by millions of American citizens. They will have the raw power—and they will use that power—to restrict access to needed medicines. They will possess a large share of the mail order drug business. They will exercise decisive leverage over their competitors' access to the marketplace.

This is why, Mr. President, these PBM's are being bought by the major manufacturing firms. They provide market power to a select few companies, precisely when the market has shifted beneath their feet.

Owning a PBM can switch sales to your own drugs. Owning a PBM can counteract the bargaining power of managed care. Owning a PBM can determine which generics you sell: your own or your competitors'. Mr. President, in short, ownership of PBMs by brandname manufacturers destroys all competition.

The brand name companies now admit it. In 1993, Merck said it expected to sell more drugs to Medco after it bought out the PBM. Merck's CEO at that particular time felt the company had to be in a position where "We can be sure that we control the flow of our own drugs." In fact, at one point last year, Lilly and PCS had agreed to make PCS's previous owner, McKesson, the sole distributor of Lilly drugs.

This is growing evidence that these manufacturer-owned PBM's are doing what one would expect. They may no longer act as honest brokers. They may now be acting in the interests of their parent companies, not their clients. They may be favoring their parent companies by switching patients from one drug to another without explicit regard to their health.

Mr. President, these charges have been filed with the Federal Trade Commission. The FTC has heard from a wide spectrum of citizens, consumer groups, trade associations, manufacturers, distributors, Federal agencies, and Congress on this issue. The FTC has even heard these concerns from the brand-name companies who do not own PBM's or who are not about to own PBM's. As a result, the Federal Trade Commission is still reviewing the Lilly-PCS proposed acquisition and has reopened its investigation of the Merck-Medco and SmithKline-Diversified deals.

I have written on two occasions to the Federal Trade Commission about these concerns. On the first occasion, I was joined by my former colleague, the distinguished Senator from Ohio, Senator Howard Metzenbaum, who then chaired the Antitrust Subcommittee of the Senate Judiciary Committee. Our feeling at that time was that the Lilly-PCS merger would lay the capstone of an uncompetitive marketplace. There were already indications that the other two deals had eroded competition.

In November, the FTC confirmed our suspicions and proposed a consent order which established strict conditions over the Lilly-PCS deal. In the next several weeks, the FTC will either approve the consent order, revise the consent order, or seek an injunction blocking the acquisition.

The FTC is not alone in its scrutiny of these manufacturer-PBM deals. It is the Food and Drug Administration's responsibility to ensure that prescription drug marketing is fair and accurate.

When the Lilly-PCS deal was the subject of public comment, the Food and Drug Administration at that time expressed grave concerns over the potential for new forms of violative marketing and promotion. In fact, I recently read in the New York Times that the Food and Drug Administration has now had to warn Merck, SmithKline Beecham, and Eli Lilly "not to put pressure on doctors to prescribe their drugs

for unauthorized treatment or to withhold sufficient disclosures regarding the risks of adverse side effects."

What does this mean? It means that if you are one of the millions of Americans covered by these PBM's, your doctor may no longer be receiving impartial advice about which drugs to prescribe to you.

Let me raise another example of how improper marketing can degenerate into inappropriate care.

Two months ago, Eli Lilly & Co. participated in a depression awareness program at a local high school. This story was published in February by the Washington Post. While sponsoring educational programs might be a laudable endeavor, the students in this particular school and the teachers were furious with the company for "turning an educational program into an extended commercial."

What was the particular drug that the drug company was pushing on the students? Mr. President, 1,300 students listened to company representatives pitch their drug, and then they received pens, pads, and brochures embossed with the product name. The product that we speak of is, of course, Prozac.

Afterward, the principal felt that Eli Lilly "shouldn't be pushing their drug program, especially not to children."

One of the students explained, "I was upset that I had to sit in an assembly for 45 minutes and listen to a plug for Prozac."

Her mother added, "The message my daughter came away with was pop a pill and everything is going to be all right."

Let me say that Eli Lilly & Co. did apologize. They admitted their conduct was inappropriate. But imagine, if you can, the potential for such abuses when a manufacturer not only makes a drug, but they also market that drug, they advertise that drug, they influence HMO's to buy that drug, they collude with their PBM subsidiary to win contracts, and—if they have not gotten your business yet—they encourage the doctors with incomplete information to switch you, the patient, to their product.

To add insult to injury, the consumer may also have to pay more for their prescription drugs. In our market economy, we all know that if there is no competition, we pay higher prices. Competition brings down prices. Competition is good for the consumer. Today, the major drug companies of America are buying up their competition and the consumer is going to foot the bill.

If the PBM's have a vested interest in their owner's products, they will not necessarily be negotiating the best deal for their patients—and this is taking place in the midst of the industry's best pricing environment in years. Look at what Wall Street is thinking. Analysts expect drug price increases to be "faster in 1995 than in the preceding 4 years."

I am deeply concerned about the impact of these acquisitions. There is growing evidence that the PBM companies no longer act as independent or honest brokers for their clients. They are going to be acting as brokers for their parent companies who pay the bills. This can only lead to inappropriate health care and to higher prices for consumers, who are already paying some of the highest prescription drug prices in the world.

The FTC has now demonstrated due diligence in investigating the Lilly-PCS deal. The FDA has also signaled its concern over these marketing abuses. Consumers will undoubtedly benefit from this vigilance.

In a textbook-perfect market, competition prevails and the consumer benefits without such scrutiny. But in the real world's imperfect markets, we must sometimes intervene. That intervention is necessary now to guarantee that true competition takes place. It is my hope that we can prevent the anti-competitive practices which I have just described this afternoon.

Mr. President, I hope that we realize what is happening in the drug marketplace in the spring of 1995, and I only hope that we are not going to act too late.

Mr. President, I see another colleague seeking the floor. I thank the Chair for recognizing me. I thank the Senator from Pennsylvania for his patience. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

FUGITIVE WELFARE REFORM

Mr. SANTORUM. Thank you, Mr. President. I rise to discuss the issue of a bill I introduced recently that I understand is going to be highlighted tonight on a Dateline/NBC telecast having to deal with the issue of fugitives—felons—who are not only running from the law, but under the law receiving welfare benefits, and under the law the police are not able to assert information from the welfare office to be able to help track this person down.

Believe it or not, that is exactly the issue that we are going to discuss and hopefully be able to remedy. I got into this in the House. I was Chairman of the Task Force on Welfare in the House of Representatives and was presented with a whole lot of information about some of the problems in the welfare system, and worked extensively putting together the House welfare reform package in 1993 and 1994.

This issue is while there have been a lot of partisanship with respect to the welfare issue and gnashing of teeth as to the mean-spiritedness of the welfare proposals that have been put forward, this particular area of the welfare bill has attracted broad bipartisan support.

When explained, most Americans—all Americans—support this kind of change. I have not heard of any organized opposition to the bill I introduced along with Representative PETER BLUTE from Massachusetts in the House or the one that was introduced here in the Senate.

The House of Representatives, in the welfare reform debate, debated this issue on the floor and it passed, I believe, unanimously on the floor of the House.

The bill now comes to the Senate as an amendment to the House welfare reform bill. Whether we bring it up, I hope this issue can be addressed, because I think it is important in not only reducing welfare fraud—and this is clearly welfare fraud—but also facilitating police operations in tracking down wanted criminals.

We know from the National Crime Information Center there are roughly 400,000 outstanding fugitive warrants in this country. As I say, believe it or not, a sizable portion of those fugitives are on welfare receiving food stamps or AFDC or some other welfare assistance. SSI is a big one, where they receive assistance from the Federal Government to help support their lifestyle while hiding from law enforcement authorities.

That is bad enough, but under current, law Federal and State law, law enforcement authorities are not able to contact the welfare offices to assert any information about this fugitive. Why? Because of welfare privacy laws. If a person gets on welfare they can collect their check, collect their benefits, and be completely immune from anybody ever finding out that they are on the welfare rolls. This is almost unbelievable. But that is, in fact, the case.

Now people may say, how many people are on this? Is this really a problem or is this an isolated case?

Let me first give Members the case. The case that really brought this to my attention was an article in the July 29, 1994, Pittsburgh Tribune Review.

I will read:

Fugitive Used Real Name for Welfare

James Brabham knew who he was. During a decade on the lam for a 1984 slaying in Pittsburgh, he used at least five aliases and five Social Security numbers.

But when he went on welfare he used his real name—and his State-issued welfare card bore his current address and photo.

The cops who arrested him on Wednesday in Philadelphia saw the card when they asked Brabham for identification. They hadn't known he was on welfare.

"I'm sure it would have made things a lot easier," said Detective Joe Hasara of the Federal Fugitive Task Force in Philadelphia, one of the squads that for years pursued lead after dead-end lead searching for Brabham.

I went and met with the Federal Fugitive Task Force in Philadelphia. What they told me was absolutely amazing. They believe from the 90-some fugitives they have caught since